

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 09-0505

FILED

SEP 30 2009

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

CACV OF COLORADO, LLC,

Plaintiff and Appellee,

v.

O R D E R

JAMES R. MOSTI,

Defendant and Appellant.

Appellant James R. Mosti (Mosti) has filed a motion which we deem to be a motion for out-of-time appeal pursuant to M. R. App. P. 4(6). Appellee CACV of Colorado, LLC, has filed an untimely request for an extension of time to file a response to the motion, but that request is DENIED. M. R. App. P. 10(2).

Mosti explains that a notice of entry of judgment entered in the district court was dated, and possibly served, on July 30, 2009, although the date of mailing is apparently uncertain. On Monday, August 31, 2009, Mosti both fax-filed and mailed a hard copy of his notice of appeal. The hard copy was received by the Clerk of the Supreme Court on September 2, 2009, beyond the 30 day period for appealing. Mosti did not realize that the rule authorizing the fax-filing of a notice of appeal would not go into effect until October 1, 2009, and thus, the fax-filing of his notice was not effective.

Mosti argues that his hard copy was timely filed pursuant to the "three-day mailing rule" under M. R. Civ. P. 6(e). He also argues that because the notice of entry of judgment was not actually filed until August 3, 2009, that this also extended the period for filing the notice of appeal. However, the "three day mailing rule" no longer applies to time deadlines under the appellate rules. M. R. App. P. 3. Further, a notice of appeal must be filed within 30 days after "service of the notice of entry of judgment or order," not after *filing* of the

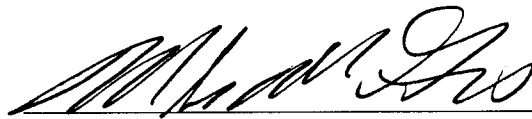
notice. M. R. App. P. 4(5)(a)(i). Thus, it is clear that Mosti's appeal was not timely filed.

However, due to Mosti's confusion over the new fax-filing rule, which is published but does not come into effect until October 1, and his diligence herein, we hereby GRANT his motion for an out-of-time appeal. Mosti's notice of appeal shall be deemed to be filed as of the date of this order.

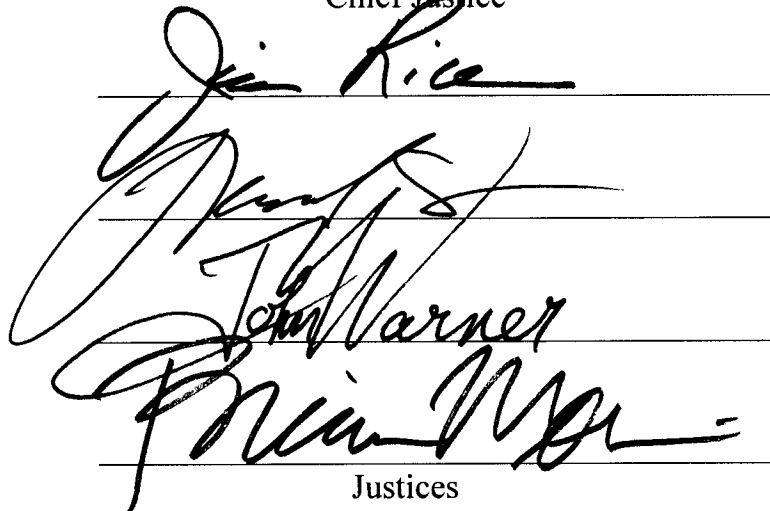
IT IS SO ORDERED.

The Clerk is directed to mail a true copy hereof to counsel of record for the respective parties.

DATED this 29th day of September, 2009.



Chief Justice



Justices